UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

Case No. 8:03-cr-77-T-30TBM

v.

SAMI AMIN AL-ARIAN,
SAMEEH HAMMOUDEH,
GHASSAN ZAYED BALLUT,
HATIM NAJI FARIZ

Defendants.
_____/

SAMI AL-ARIAN'S MOTION TO SUPPRESS EVIDENCE OBTAINED OR DERIVED FROM FISA

COMES NOW the Accused, Dr. Sami Amin Al-Arian, by counsel, and moves this Honorable Court for the entry of an order suppressing any and all evidence seized by the United States Government obtained or derived from FISA surveillance of Dr. Sami Al-Arian, including, but not limited to any evidence obtained or derived from FISA extensions based on the 1995 search of Dr. Al-Arian's home and offices. The Court should suppress the evidence under 50 U.S.C. §§ 1806(a), 1806(e), 1806(g), U.S. Const. Amend. IV, and the Due Process Clause of U.S. Const. Amend. V.

ISSUES

All evidence obtained and derived from the FISA surveillance of Dr. Al-Arian should be suppressed on the following grounds: (a) the FISA applications may fail to establish probable cause that Al-Arian is "an agent of a foreign power"; (b) the FISA applications may contain intentional or reckless material falsehoods or omissions, and the surveillance therefore may

violate U.S. Const. Amends. IV and V under the principles of Franks v. Delaware, 438 U.S. 154 (1978), see, e.g., United States v. Duggar, 743 F.2d 59, 77 n. 6 (2d Cir. 1984); (c) minimization procedures may be inadequate, and the government may have failed to comply with those procedures; (d) the government may not have made the required certifications in the FISA applications, or those certifications in the FISA applications, or those certifications may be clearly erroneous; and (e) any extensions of FISA applications based on the 1995 searches of Dr. Al-Arian's home and offices and evidence derived therefrom are fruit of the poisonous tree and should be suppressed. We address these points in order.[1]

BIOGRAPHICAL BACKGROUND

Dr. Sami Al-Arian was born to Palestinian parents in 1958 in Kuwait. He came to the United States in 1975 and after receiving his Ph.D degree in computer engineering, he became a professor at the University of South Florida in 1986. While a tenured professor, he received the Outstanding Teacher Award and the Teaching Incentive Award. Dr. Al-Arian became an active community leader, helping to establish some of the largest grass roots organizations in the United States, including the Islamic Society of North America (ISNA) in 1981, Muslim Arab Youth Association (MAYA) in 1977, Islamic Association for Palestine, IAP (1981), Islamic committee for Palestine, ICP (1988), Islamic Community of Tampa (1990) and the Islamic Academy of Florida (1992). He also co-founded the World and Islam Studies Enterprise (WISE) in 1990 as a research and academic institution dedicated to establishing a dialogue and understanding between Muslim and Western scholars. Dr. Al-Arian was also dedicated to interfaith dialogues, community development and civil rights.

[1] Because we have not had access to the underlying FISA materials, we can only speculate about their inadequacies. If the Court grants Dr. Al-Arian's motion for access to the FISA materials, we will seek leave to supplement this memorandum.

In 1996, Dr. Al-Arian's brother-in-law, Mazen Al Najjar, was jailed on immigration charges and was incarcerated for nearly (4) years on the basis of secret evidence. As a result, Dr. Al-Arian became a leading spokesman against the use of Secret Evidence, especially working with the media and with the United States Congress. Between 1998 and 2001, he visited and secured the endorsements of over 150 congressional members to ban the use of secret evidence (HR 2121 and S 3139 in the 106th Congress, and HR 1266 in the 107th Congress). Between 1999 and 2000, he received three civil rights awards from the American Muslim Alliance, the American Muslim Council, and the American Arab Anti discrimination Committee.

Dr. Al-Arian was also a committed Palestinian activist, critical of the illegal Israeli occupation in the Occupied Territories. It is this particular political activism, which has been groundlessly conflated with terrorism. The government claims Dr. Al-Arian is not being prosecuted for his political beliefs or associations. The nature of the surveillance imposed on him and his family tell another story.

AL-ARIAN FISA SURVEILLANCE

According to Special Agent Kerry L. Myers, the FBI obtained court authority to establish electronic surveillance on Dr. Al-Arian, other defendants, and co-conspirators on December 27, 1993. See Affidavit, 2003 Search Warrant. The breadth and duration of the surveillance on Dr. Al-Arian, in particular, is remarkable, allegedly ending sometime in August 2000. See Government Discovery Index. In the interim period, in November 1995, Dr. Al-Arian's home and offices were searched along with a storage facility; at the time of his arrest in November 2003, his home and offices at the Islamic Academy of Florida were also searched and hundreds of thousand of documents were seized. An examination of those papers can be found in our corresponding Motion to Suppress the 1995 and 2003 searches filed this day.

ARGUMENT

FISA

FISA "was enacted in 1978 to establish procedures for the use of electronic surveillance in gathering foreign intelligence information. . . . The Act was intended to strike a sound balance between the need for such surveillance and the protection of civil liberties." In re Kevork, 788 F.2d 566, 569 (9th Cir. 1986) (quotation omitted). It authorized "applications for a court order approving the use of electronic surveillance to obtain foreign intelligence information." S. Rep. 95-701, reprinted in 1978 U.S.C.C.A.N. 3973. It was passed in response to the Church Committee's review of the Nixon Administration's surveillance of the activities of political opponents, including the Democratic Party, under the guise of national security.[2]

Through FISA, Congress attempted to limit the propensity of the Executive Branch to engage in abusive or politically motivated surveillance. FISA was Congress's attempt to balance the "competing demands of the President's constitutional powers to gather intelligence deemed necessary to the security of the Nation, and the requirements of the Fourth Amendment." H.R. Rep. No. 95-1283, at 15.

FISA establishes procedures for surveillance of foreign intelligence targets. First, it created a FISA Court—the Foreign Intelligence Surveillance Court, or "FISC"—to which the government must apply for an order authorizing electronic monitoring. 50 U.S.C. §§ 1803m 1804, "With important exceptions not pertinent here, FISA requires judicial approval before the

[2] . S. Rep. 95-701, 709. See also Ira Shapiro, The Foreign Intelligence Surveillance Act: Legislative Balancing of National Security and the Fourth Amendment, 15 Harv. J. on Legis. 119, 120 (1977-78); David Johnston, Administration Begins to Rewrite Decades-Old Spying Restrictions, N.Y. Times, Nov. 30, 2002, at A1.

government engages in an electronic surveillance for foreign intelligence purposes." United States v. Cavanagh, 807 F.2d 787, 786 (9th Cir. 1987).

Second, the statute requires that any application to the FISA court be approved by the Attorney General and contain certain information and certifications. 50 U.S.C. § 1804. Of particular significance here, the application to the FISC must include "a statement of the facts and circumstances relied upon by the applicant to justify his belief that . . . the target of the electronic surveillance is a foreign power or an agent of a foreign power." Id. § 1804(a)(4)(A); United States v. Posey, 864 F.2d 1487, 1490 (9th Cir. 1989). FISA defines the term "foreign power," as relevant here, as "a group engaged in international terrorism or activities in preparation therefore." 50 U.S.C. § 1801(a)(4).

An "agent of a foreign power," as applied to a "United States person,"[3] means (as relevant here) "any person who . . . knowingly engages in . . . international terrorism, or activities that are in preparation therefore, for or on behalf of a foreign power," and "any person who . . . knowingly aids or abets any person in the conduct of activities" described above. Id. § 1801(b)(2)(C), (E) (emphasis added).

The application to the FISC must also provide a "statement of proposed minimization procedures." Id. § 1804(a)(5). FISA specifies the requirements for such procedures with respect to electronic surveillance. Id. § 1801(h).

The applicant must set forth certain "certifications" by an appropriate executive branch official. Among other things, the official must certify "that the purpose of the

[3] The term "United States person" includes any "citizen of the United States." 50 U.S.C. § 1801(4). At the time, Dr. Sami Al-Arian—the target of the FISA surveillance at issue here, was a permanent resident alien falls within this definition.

surveillance is to obtain foreign intelligence information."[4] and that "such information cannot reasonably be obtained by normal investigative techniques." Id. § 1804(a)(7)(B), (C).

Third, the statute specifies findings that the FISC must make before it can approve electronic surveillance or a physical search. Id. §§ 1805. The court must find that the procedural requirements of FISA have been satisfied, e.g., id. §§ 1805(a)(1),(2), (4), including the minimization requirements, and it must find (among other things) "probable cause to believe that . . . the target of the electronic surveillance is a foreign power or an agent of a foreign power." Id. § 1805(a)(3)(A). When the target of the surveillance is a "United States person," the FISC must also determine that the government's certifications under § 1804 are not "clearly erroneous." Id. § 1805(a)(5).

Fourth, FISA authorizes any "aggrieved person" to move to suppress "evidence obtained or derived from" electronic surveillance if "the information was unlawfully acquired" or "the surveillance was not made in conformity with an order of authorization or approval." Id. § 1806(e). FISA defines the phrase "aggrieved person" as "a person who is the target of electronic surveillance or any other person whose communications or activities were subject to electronic surveillance." Id. § 1801(k). Under these definitions, Sami Al-Arian is an "aggrieved person" as to the electronic surveillance of that intercepted his conversations. See, e.g., Cavanagh, 807 F.2d at 789 (person incidentally overhead during FISA surveillance of another

[4] Effective October 2001, Congress amended §§ 1804(a)(7)(B) through the so-called USA PATRIOT Act to require certification only that "a significant purpose"—rather than "the purpose"—of the surveillance is to obtain foreign intelligence informationIn May of 2002, the Foreign Intelligence Surveillance Court of Review ("Review Court"), a federal court empowered to review the denial of a FISA application by the Foreign Intelligence Surveillance Court ("FISC"), issued its first ever opinion, in its 24 year history, which upheld the constitutionality of the "significant" purpose standard. *In re Sealed Case, 310 F.3d 717 (Foreign Int. Surv. Ct. Rev. 2002).* . Because we believe that the surveillance at issue here occurred before October 2001, we do not address the constitutionality of the "significant purpose" provision. If it develops that any portion of the surveillance at issue here occurred after October 2001 and thus under FISA as amended, we will seek leave to address the constitutional issue.

target is an "aggrieved person"); United States v. Belfield, 692 F. 2d 141, 143, 146 n.21 (D.C. Cir. 1982), (same).

FISA APPLICATION MAY FAIL TO ESTABLISH PROBABLE CAUSE THAT DR. AL-ARIAN WAS AN AGENT OF A FOREIGN POWER

As noted above, before issuing an order authorizing FISA surveillance the FISC must find (among other things) "probable cause to believe that . . . the target of the electronic surveillance is a foreign power or an agent of a foreign power." 50 U.S.C. § 1805(a)(3)(A). An "agent of a foreign power," as applied to a "United States person" such as Al-Arian, means (as relevant here) "any person who . . . knowingly engages in international terrorism, or activities that are in preparation therefore, for or on behalf of a foreign power," and "any person who . . . knowingly aids or abets any person in the conduct of activities" described above. Id. § 1801(b)(2)(C), (E) (emphasis added).

The Supreme Court recently reiterated that criminal probable cause requires "a reasonable ground for belief of guilt," and "the belief of guilt must be particularized with respect to the person to be searched or seized." Maryland v. Pringle, 124 S. Ct. 795, 800 (2003) (quotation omitted). Under FISA, the probable cause standard is directed not at the target's guilt of a crime, as with a traditional warrant, but at the target's status as "a foreign power or an agent of a foreign power." Thus, this Court must initially determine, with respect to each application for surveillance of Al-Arian, whether the application established a reasonable, particularized ground for belief that Al-Arian fell within this definition. 50 U.S.C. §§ 1801(b)(2)(C), (E), 1805(a)(3)(A); see Birkenstock, supra, 80 Geo. L.J. at 851-53 (discussing the FISA probable cause standard).

Under the definition of "agent of a foreign power" FISA surveillance could not be authorized:

> Against an American reporter merely because he gathers information for Publication in a newspaper, even if the information was classified by the Government. Nor would it be authorized against a Government employee or former employee who reveals secretes to a reporter or in a book for the purpose of informing the American people. *This definition would not authorize surveillance of ethnic Americans who lawfully gather political information and perhaps even lawfully share it with the foreign government of their national origin. It obviously would not apply to lawful activities to lobby, influence, or inform members of Congress or the administration to take certain positions with respect to foreign or domestic concerns.* Nor would it apply to lawful gathering of information preparatory to such lawful activities. *In re Sealed Case, 310 F.3d 717 @ 739.(Emphasis added).*

In our case, in the affidavit to the magistrate, in order to establish probable cause, the affiant must overcome that what Dr. Al-Arian was doing, in terms of his protected First Amendment activity, fell *outside* of the enumerated exceptions as discussed in *In re Sealed Case.* The affiant would have had to show the issuing Magistrate some actions by the Accused outside of Dr. Al-Arian's political activism, or his establishment of WISE or ICP, in order to show probable cause and compel the FISA classification of an agent of a foreign power. As discussed above, Dr. Al-Arian's lobbying efforts in Congress against Secret Evidence, his public speeches and writings on the Palestinian issue would be recognized by the FISCR as legitimate protected First Amendment activity and, thus not subject to the surveillance powers under FISA. However, without reviewing the Al-Arian applications, we cannot address their specific contents. We urge the Court, if it ultimately declines to produce the applications to the defense, to examine them with care to determine whether they satisfy the statutory mandate.

THE FISA APPLICATIONS MAY CONTAIN INTENTIONAL OR RECKLESS MATERIAL FALSEHOODS AND OMISSIONS, AND THE SURVEILLANCE THEREFORE MAY VIOLATE U.S. CONST. AMENDS. IV AND V UNDER THE PRINCIPLES OF FRANKS.

Franks establishes the circumstances under which the target of a search may obtain an evidentiary hearing concerning the veracity of the information set forth in a search warrant affidavit. "[W]here the defendant makes a substantial preliminary showing that a false statement knowingly and intentionally, or with reckless disregard for the truth, was included by the affiant in the warrant affidavit, and if the allegedly false statement is necessary to the finding of probable cause, the Fourth Amendment requires that a hearing be held at the defendant's request." Franks, U.S. at 156-57.

Franks establishes a similar standard for suppression following the hearing: "In the event that at the hearing the allegation of perjury or reckless disregard is established by the defendant by a preponderance of the evidence, and, with the affidavit a false material set to one side, the affidavit is remaining content is insufficient to establish probable cause, the search warrant must be voided and the fruits of the search excluded to the same extent as if probable cause was lacking on the face of the affidavit." Id. at 156; see United States v. Blackmon, 273 F.3d 1204, 1208-10 (9th Cir. 2001) (applying Franks to Title III wiretap application); United States v. Meling, 47 F.3d 1546, 1553-56 (9th Cir. 1995) (same); Duggan, 743 F.2d at 77 n.6 (suggesting that Franks applies to FISA applications under Fourth and Fifth Amendments); see also, e.g., United States v. Hammond, 351 F.3d 765, 770-71 (6th Cir. 2003) (applying Franks principles); United States v. Hill, 142 F.3d 305, 310 (6th Cir. 1998) (same).

The Franks principles apply to omissions as well as false statements. See, e.g., United States v. Carpenter. 360 F.3d 591, 596-97 (6th Cir. 2004); United States v. Atkin, 107

F.3d 1213, 1216-17 (6th Cir. 1997). Omissions will trigger suppression under Franks if they are deliberate or reckless and if the search warrant affidavit, with omitted material added, would not have established probable cause. See, e.g., id.

Because the government has denied access to the Al-Arian FISA applications, it is difficult at this point to identify any specific false statements or material omissions. Although our lack of access prevents us from making the showing that Franks ordinarily requires, we note that the possibility that the government has submitted FISA applications with intentionally or recklessly false statements or materials omissions is hardly speculative.[5] We do not know whether any of the Al-Arian FISA applications are among those that the DOJ has identified as containing false statements.

(a) Criminal Investigation vs. Foreign Intelligence Investigation: Title III vs. FISA

In order to preserve both the appearance and the fact that FISA surveillances and searches were not being used sub rosa for criminal investigations, the [FISC] routinely approved the use of information screening "walls" proposed by the government in its applications. During the time of the FISA wiretaps in this case, there existed a supposed wall of separation between the FBI and the Criminal Division.

> Apparently to avoid running afoul of the primary purpose test used by some courts, the 1995 Procedures limited contacts between the FBI and the Criminal Division in cases where FISA surveillance or searches were being conducted by the FBI for foreign intelligence (FI) or foreign counterintelligence (FCI) purposes. The procedures state that "the FBI and Criminal Division should ensure that advice intended to preserve the option of a criminal prosecution does not inadvertently result in either the fact or the appearance of the Criminal Division's *directing or controlling* the FI or FCI investigation toward law enforcement

[5] On seventy-five occasions, the government confessed error relating to "misstatements and omissions of material facts" it had made in its FISA applications. Indeed, the FISC took the extraordinary step of preventing one FBI agent from appearing before it as an affiant. In re All Matters Submitted to the Foreign Intelligence Surveillance Court, *218 F. Supp. 2d 611, 621 (Foreign Int. Surv. Ct. 2002)* [hereinafter In re All Matters]

> objectives." 1995 Procedures at 2, P6 (emphasis added). Although these procedures provided for significant information sharing and coordination between criminal and FI or FCI investigations, based at least in part on the "directing or controlling" language, they eventually came to be narrowly interpreted within the Department of Justice, and most particularly by OIPR, as requiring OIPR to act as a "wall" to prevent the FBI intelligence officials from communicating with the Criminal Division regarding ongoing FI or FCI investigations. *See Final Report of the Attorney General's Review Team on the Handling of the Los Alamos National Laboratory Investigation* (AGRT Report), Chapter 20 at 721-34 (May 2000). Thus, the focus became the nature of the underlying investigation, rather than the general purpose of the surveillance. Once prosecution of the target was being considered, the procedures, as interpreted by OIPR in light of the case law, prevented the Criminal Division from providing any meaningful advice to the FBI. *In re Sealed 310 F.3d @ 728*

However, the surveillance of Dr. Al-Arian was not separated by a "wall" as utilized in the foreign intelligence surveillance cases. This particular surveillance was not moderated by any "wall" between the FBI and the criminal investigators; in fact, there *was* sharing between both the criminal side and the foreign intelligence side of law enforcement. Here there was a transfer of FISA surveillance information, derived from nearly 50 phone calls, by the Tampa Division of the FBI to the criminal investigators and prosecutors from the United States Attorney's Offices in Tampa, Florida, "pursuant to an applicable Order of the FISA court" thus, revealing the investigation of Dr. Al-Arian as being one primarily criminal in nature. [6]

> In significant cases where *criminal* investigations of FISA targets were being conducted concurrently, and prosecution was likely, [the FISC] became the "wall" so that FISA information could not be disseminated to criminal prosecutors without the Court's approval. In re All Matters Submitted to the Foreign Intelligence Surveillance Court, *218 F. Supp. 2d 611, 620 (Foreign Int. Surv. Ct. 2002)*.

This particular Tech Cut shows that the government was not bound by the law, *as it existed during the period of the surveillance*. Indeed, the "sub rosa" nature of this criminal investigation allowed the government to conduct electronic surveillance *without* having to

[6] See Tech Cut Summary 6-1-60-65; Memo dated August 21, 2000. Because we believe this summary may fall within the purview of the Protective Order it is not attached hereto.

meet the traditional probable cause requirements for criminal investigations. See *50 U.S.C. 1805*(a)(3)(A)-(B) (2000). As a result, all of the evidence derived from the surveillance of Dr. Al-Arian pursuant to FISA applications should be suppressed for their failure to seek appropriate authority under Title III of the Omnibus Crime Control and Safe Streets Act of 1968 , 18 U.S.C. §§ 2510-2520 (1982).

The Court should disclose the FISA applications and related materials to the defense and, following the disclosure, conduct a Franks hearing at which Dr. Al-Arian will have the opportunity to prove that the affiants before the FISC intentionally or recklessly made materially false statements and omitted material information from the FISA applications.

THE MINIMIZATION PROCEDURES MAY BE INADEQUATE, AND THE GOVERNMENT MAY HAVE FAILED TO COMPLY WITH THOSE PROCEDURES.

(a) Minimization under FISA

FISA mandates that each application contain "a statement of the proposed minimization procedures." Id. § 1804(a)(5). Before issuing at order authorizing FISA surveillance, the FISC must find that "the proposed minimization procedures meet the definition of minimization" contained in the statute. Id. § 1805(a)(4).

As relevant here, FISA defines minimization, with respect to electronic surveillance, as "(1) specific procedures, which shall be adopted by the Attorney General, that are reasonably designed in light of the purpose and technique of the particular surveillance, to minimize the acquisition and retention, and prohibit the dissemination, of nonpublicly available information concerning unconsenting United States to obtain, produce, and disseminate foreign intelligence information," and "(2) procedures that require that nonpublicly available

information, which is not foreign intelligence information . . . shall not be disseminated in a manner that identifies any United States person, without such person's consent , unless such person's identity is necessary to understand foreign intelligence information or assess its importance." Id. § 1801(h)(1), (2). The statute adds that, notwithstanding these provisions, minimization procedures may "allow for the retention and dissemination of information that is evidence of crime which has been, is being, or is about to be committed and that is to be retained or disseminated for law enforcement purposes." Id. § 1801(h)(3); In re: Sealed Case, 310 F.3d at 73; (discussing FISA minimization procedures).

(b) Preservation of Exculpatory Evidence

Destruction of potentially exculpatory evidence violates a defendant's right to a fundamentally fair trial as guaranteed by the due process clauses of the Fifth and/or Fourteenth Amendment of the Constitution. See, e.g., *Youngblood,* 109 S. Ct 333. at 337. In the case at bar, the surveillance of Dr. Al-Arian spanned several years, with tens of thousands of hours of phone calls tapped as a result of FISA warrant(s). If the investigation of Dr. Al-Arian was, in all likelihood, a criminal investigation as opposed to a foreign intelligence surveillance investigation, the government would have been obligated to preserve any exculpatory evidence they gleaned from their surveillance. However, in the case at bar, the government has been allowed to minimize out of existence any exculpatory evidence under the guise of the minimization requirements under FISA.

We ask that the Court review the Al-Arian FISA applications, all extensions of surveillance, and orders to determine whether they comply with the statutory minimization standard. In addition, we request that the Court review the intercepted Al-Arian communications to determine whether the government satisfied the minimization requirements that the statute and the FISA orders impose. Further, as requested above, those applications that do not fall properly under FISA authority.

THE GOVERNMENT MAY NOT HAVE MADE THE REQUIRED CERTIFICATIONS, OR THOSE CERTIFICATIONS MAY BE CLEARLY ERRONEOUS.

The Court should ensure that the FISA applications contain the certifications required under 50 U.S.C. § 1804(a)(7). In addition, the Court should examine the record to determine whether those certifications are clearly erroneous. Id. § 18059a)(5). As the Ninth Circuit has declared in the Title III context, "The procedural steps provided in the Act require 'strict adherence,'" and "'utmost scrutiny must be exercised to determine whether wiretap orders conform to [the statutory requirement].'" Blackmon, 273 F.3d at 1207 (quoting United States v. Kalustian, 529 F.2d 585, 588, 589 (9th Cir. 1975)).

The Court should examine two certifications with particular care. First, the government presumably certified that "the purpose" of the surveillance was "to obtain foreign intelligence information." 50 U.S.C. §§ 1804(a)(7)(B). Second, the government was required to certify that the foreign intelligence information "cannot reasonably be obtained by normal investigative techniques," Id. §§ 1804(a)(7)(C), and to provide a "statement of the basis for the certification," id. § 1804(a)(7)(E)(iii). As the Ninth Circuit has observed concerning the similar provision in Title III, 18 U.S.C. § 2518(1)(c), "the necessity requirement 'exists in order to limit the use of wiretaps, which are highly intrusive,' "Blackmon, 273 F.3d at 1207 (quoting United

States v. Bennett, 219 F.3d 1117, 1121 (9th Cir. 2000) (internal quotation omitted)). The necessity requirement, together with the statement of supporting facts, "ensure that wiretapping is not resorted to in situations where traditional investigative techniques would suffice to expose the [information sought]." Id.; see, e.g., Giacalone, 853 F.2d at 480 (discussing necessity requirement under Title III); Alfano, 838 F.2d at 163-64 (same).

EXTENSIONS OF SURVEILLANCE BASED ON 1995 SEARCHES OF AL-ARIAN HOME AND OFFICES ARE FRUIT OF POISONOUS TREE AND ILLEGAL AND THEREFORE SHOULD BE SUPPRESSED

Dr. Al-Arian has filed, contemporaneously with this motion, an extensive motion to suppress the 1995 searches of Dr. Al-Arian's home, offices, storage facility and WISE. If any extensions to the FISA wiretaps were based on illegally acquired information derived from the 1995 searches, that evidence should also be suppressed as 'fruits of the poisonous tree". Wong Sun v. United States, 371 U.S. 471 (1963). Because the applications for extensions are unavailable to the defense, we request that the Court review the applications for extensions to determine whether the government based any of their grounds on the illegal searches that transpired in 1995.

CONCLUSION

For the foregoing reasons, the Court should suppress all evidence obtained or derived from the Al-Arian FISA surveillance and all communications intercepted.

Dated: 22 November 2004

Respectfully submitted,

_/s/Linda Moreno___

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 22nd day of November, 2004, a true and correct copy of the foregoing has been furnished, by CM/ECF, to Walter Furr, Assistant United States Attorney; Terry Zitek, Assistant United States Attorney; Kevin Beck, Assistant Federal Public Defender, M. Allison Guagliardo, Assistant Federal Public Defender, counsel for Hatim Fariz; Bruce Howie, Counsel for Ghassan Ballut, and by U.S. Mail to Stephen N. Bernstein, P.O. Box 1642, Gainesville, Florida 32602, counsel for Sameeh Hammoudeh.

_/s/ Linda Moreno__
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